

<b>COMPLIANCE BOARD OPINION NO. 98-4</b>
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June 8, 1998

*Mr. Kenneth E. Sutton*

The Open Meetings Compliance Board has considered your complaint that the Open Meetings Act was violated by the disclosure of minutes of a closed meeting of the Brentwood Town Council. Specifically, your complaint is that the Mayor violated the Act by disclosing the minutes of the closed Council meeting on February 17, 1998, at which a personnel action was discussed.

From your complaint and the timely response on behalf of the Mayor and Council of Brentwood from Andrew W. Nussbaum, Esquire, the Compliance Board understands that the Council held a closed meeting on February 17, 1998, to discuss a personnel matter. You had requested the closed session, seeking Council discussion of a particular personnel action affecting you. The Council evidently closed the session in reliance on §10-508(a)(1)(i) of the State Government Article, which authorizes a meeting to be closed for discussion of “the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction.”

The Act requires that the public body “have written minutes of its session prepared.” §10-509(b).<sup>1</sup> The status of minutes typically conforms to the nature of the meeting: That is, if a public body held an open meeting, the minutes of the meeting are to be open for public inspection. §10-509(d). If the meeting was closed, as a general rule “the minutes shall be sealed and may not be open to inspection.” §10-509(c)(3)(iii).

The general rule that closed session minutes be kept confidential, however, has three exceptions. Two are not pertinent here, but the third is. Closed session minutes “shall be unsealed and open to inspection” if a majority of members of a public body, either on request or on the public body’s own initiative, vote in favor of unsealing the minutes. §10-509(c)(4)(iii).

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<sup>1</sup> The requirement for minutes applies to both open and closed meetings. With regard to closed meetings, minutes are required no matter the reason under §10-508 for closing a meeting.

According to Mr. Nussbaum's letter, that is what happened here. "On March 2, 1998, the minutes of the closed session of February 17, 1998, were approved by the Town Council of Brentwood, and, as is the ordinary course of business, those minutes were then included in the public records of the Town." The Compliance Board observes that, in ordinary parliamentary practice, the approval of minutes is not synonymous with their disclosure. Indeed, under the Act, a public body would have the authority to review and approve the minutes of a closed session without disclosing their content to the public. If, however, "the ordinary course of business" in Brentwood is that a motion to approve closed session minutes is intended to encompass their disclosure as well, and if the members of the Brentwood Town Council so understand a motion to approve minutes, then majority support for such a motion is a disclosure authorized by the Open Meetings Act.

The Compliance Board believes that the better practice is for a public body to keep separate the issues of approval of minutes and disclosure of closed session minutes. Indeed, the Compliance Board believes that, when a meeting was closed at an employee's request to discuss a personnel action affecting that employee, sound practice would cause a public body to give the employee an opportunity to object before minutes of that meeting are disclosed. The point of the exemption, after all, is to protect the privacy of employees. By analogy, personnel records may not be disclosed by a government employer without the consent of the employee. §10-616(i) of the State Government Article.

Nevertheless, the Open Meetings Act does not compel this better practice. The Act simply vests discretion in the public body whether to disclose closed session minutes. Therefore the Compliance Board concludes that the Council did not violate the Open Meetings Act by voting to disclose the minutes of the closed session of February 17, 1998, nor did the Mayor by actually disclosing the contents following the Council's vote.<sup>2</sup>

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.  
Courtney McKeldin  
Tyler G. Webb

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<sup>2</sup> The Compliance Board's opinion is limited to the application of the Open Meetings Act. The letter in which you presented your complaint about the Act also contained allegations that other laws were violated. The Compliance Board has no jurisdiction to address these other matters.